

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

07 CV 7839 (LTS)

NIPPON YUSEN KAISHA a.k.a. NYK LINE,

Plaintiff,

- against -

FRESH WEST EXCHANGE,

Defendants.

VERIFIED COMPLAINT IN
ADMIRALTY

Plaintiff, by its attorneys, Cichanowicz Callan Keane Vengrow & Textor, LLP, for its complaint, alleges on information and belief:

1. The jurisdiction of this Court is based upon the admiralty and maritime nature of the claims within the meaning of 28 U.S.C. 1333(1) and F.R.Civ.P. 9(h).
2. Defendant was the shipper, consignor and billing party of certain cargoes loaded and carried by plaintiff by sea pursuant to one or more bill of lading contracts of carriage.
3. Pursuant to said contract(s) of carriage, there is now due and owing to plaintiff from the defendants ocean freight and other charges in the aggregate amount of \$24,170.00, no part of which has been paid although duly demanded.
4. Plaintiff sues on theories of breach of contract and account stated.
5. All conditions precedent have been performed or have occurred.
6. The bill of lading contract(s) of carriage on which suit is brought provide that in any successful action brought by plaintiff against defendant for recovery of amounts due plaintiff, that plaintiff shall also recover its attorneys' fees, costs and disbursements.

WHEREFORE, Plaintiff prays:

(a) That process in due form of law according to the practice of this Court in cases of admiralty and maritime jurisdiction issue against the defendant, citing it to appear and answer under oath all and singular the matters alleged;

(b) That since the defendants cannot be found within the district pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment, pursuant to Rule B of the Supplemental Admiralty Rules and the United States Arbitration Act, 9 U.S.C. §§ 1 and 8, attaching all tangible or intangible property in whatever form or any other funds held by any garnishees to be named in the process up to the amount of \$36,255 which represents plaintiff's good faith estimate of the principal amount, prejudgment interest, attorneys' fees, costs and disbursements sued for to secure the plaintiff's claim, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged;

(c) That plaintiff have judgment for the amount of its claim together with interest plus the costs and disbursements of this action.

Dated: New York, NY, September 5, 2007

CICHANOWICZ, CALLAN, KEANE,
VENGROW & TEXTOR, LLP
Attorneys for Plaintiff

By: Joseph De May, Jr.
Joseph De May, Jr. [JD-9105]
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New York, New York 10006-2802
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ATTORNEY VERIFICATION

PAUL M. KEANE declares that the following statement is true under the penalties of perjury:

1. I am over 18 years of age, of sound mind, capable of making this verification and fully competent to testify to all matters stated herein.
2. I am attorney for the plaintiff in this action and I am fully authorized to make this verification on its behalf.
3. I have read the foregoing complaint, and the contents thereof are true and accurate to the best of my knowledge upon information and belief.
4. The reason that this verification was made by me and not the plaintiff is that the plaintiff is a corporation, none of whose officers are present in the district.
5. The source of my knowledge is information and records furnished to me by the plaintiff and its underwriters, all of which I believe to be true and accurate.

Dated: New York, New York

September 5, 2007

Joseph De May, Jr.

Joseph De May, Jr. [JD-9105]